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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/520,215

01/04/2005

Christian Auberge

AUBERGER 1 PCT

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04/11/2006

WILLIAM COLLARD  
COLLARD & ROE, P.C.  
1077 NORTHERN BOULEVARD  
ROSLYN, NY 11576

EXAMINER

SUERETH, SARAH ELIZABETH

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/520,215	<b>Applicant(s)</b> AUBERGER, CHRISTIAN	
	<b>Examiner</b> Sarah Suereth	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/18/06 &amp; 1/04/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed on January 1, 2005, fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered unless noted on form PTO-892.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 1, the phrase "especially" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claims 1-9 are rejected as being indefinite under 35 U.S.C. 112.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected as being anticipated under 35 U.S.C. 102(b) by CH 87677 and DE 8107985.

As noted in applicant's discussion of the references, they both disclose wooden boxes. They have circumferential walls with pass through openings, and are made out of wood, a sustainable material. They are capable of igniting charcoal once ignited.

Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed (GB 239436).

Reed discloses an apparatus for igniting charcoal, including a cage having a circumferential wall with pass through openings (Fig. 1) and made of wood, a sustainable material (col. 1, lines 5,6). The shape is polygonal, with straight side walls made of rods stacked above one another, also made of a sustainable material (Fig. 2). The ends of the rods are stacked in an alternating fashion and are joined with each other (Fig. 2). The ends of the rods are mutually joined through wood dowels at each

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corner (Fig. 2, element E). The circumferential wall has an easily inflammable combustible on sections (col. 2, line 50).

Claims 1, 2, 6, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hartman (2981613).

Hartman discloses an apparatus for igniting charcoal, including a cage having a circumferential wall (Fig. 1, elements 11-14) with pass through openings (Fig. 1, element 31) and made of a sustainable material (col. 2, lines 12-15). The shape of the circumferential wall is polygonal, including straight side walls (col. 2, lines 37,38).

Regarding claim 6, there is a floor (Fig. 3, element 18) made of cardboard (col. 2, lines 12-15).

Regarding claim 8, the material of the container is impregnated with an easily inflammable combustible (col. 2, lines 14-16).

Regarding claim 9, there are igniting aids (Fig. 2, element 27) located on the corner region floor side, also impregnated with an easily inflammable combustible (col. 3, lines 13,14).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Witt (4953533).

Reed discloses in Figure 2 a bottom layer between the two lowermost layers of rods (between elements B and F). Reed does not disclose that this layer is made out of cardboard.

Witt discloses a self igniting combustion package for usage in a charcoal grill. Witt also discloses that the package is made out of cardboard for the advantages of retaining heat, burning readily, and commercial availability (col. 3, lines 56,57).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use cardboard for the bottom portion, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (MPEP 2144.07). See *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

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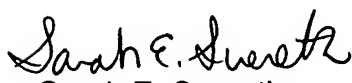
**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See U.S. Patent Numbers 182287, 211085, and 215066 for examples of fire kindling devices made of wooden slats. Also, WO 2004113471 discloses a charcoal burning device with a similar construction.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Suereth whose telephone number is (571) 272-9061. The examiner can normally be reached on Monday to Thursday 7:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Sarah E. Suereth  
Patent Examiner  
Art Unit 3749



EHUD GARTENBERG  
SUPERVISORY PATENT EXAMINER